IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 57-DBA of 1997

Date of Decision :- September 25, 2006

State of Haryana ....APPELLANT

VERSUS

Sultan Singh and another .... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present:- Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

Mr. R.S.Mamli, Advocate for the respondents.

MEHTAB S.GILL, J.

This is an appeal against the judgment dated 16.2.1996 of the Additional Sessions Judge, Kurukshetra, whereby he acquitted accused Sultan Singh and Ratna alias Ratan Singh.

The case of the prosecution is that Ishwar Singh, father of Darbara Singh, lodged FIR Ex.PW/4 stating that on 27.6.1994 Darbara Singh along with his brother Dhara Singh and their father Ishwar Singh were present in the house when accused Ratna and his friend Sultan Singh came there. Ratna stated to Ishwar Singh that he was being called by his

son Sultan Singh. Ishwar Singh accompanied Ratna to the house of Sultan Singh. Darbara Singh and Dhara Singh followed them. They saw Ishwar Singh had been taken by accused Sultan Singh and Ratna towards the road for about one kilometer away from the village abadi. Ratna then took Ishwar Singh on a katcha path towards the fields of Raghbir Singh and within their sight, Ratna took Ishwar Singh in his grip and accused Sultan Singh took out a Gandasa from a plastic bag and gave 2/3 Gandasa blows on the back of the neck of Ishwar Singh. Darbara Singh and Dhara Singh raised an alarm, which attracted Suresh Chand and Baldev Singh to the place of occurrence.

The prosecution to prove its case brought into witness box Dr. S.C.Grover as PW1, Joginder Singh Patwari as PW2, Constable Ram Kishan as PW3, Darbara Singh as PW4, Dhara Singh PW5, Baldev Singh as PW6, Suresh Chand as PW7, Makhan Singh as PW8, Dharam Raj as PW9, Constable Krishan Lal as PW10, Naresh Verma PW11, Jai Pal as PW12 and SI Ram Chander as PW13.

Learned counsel for the appellant-State has argued that Baldev Singh PW6 and Suresh Chand PW7 had supported the case of the prosecution by stating that on 27.6.1994 they were present in their fields at 8.00/9.00 p.m. where they were watering their paddy crop. They saw Sultan Singh accused giving 2/3 Gandasa blows on the neck of Ishwar Singh, who had been caught by accused Ratna. Learned State counsel has further argued that the FIR is prompt, names of the accused are given and the injuries inflicted have also been stated.

Learned counsel for the accused has argued that the version given by the two eye-witnesses Baldev Singh PW6 and Suresh Chand

PW7, is not trustworthy. They were watering their fields at 9 p.m. in the night. It was a dark night and they could not have seen Sultan Singh giving 2/3 Gandasa blows on the neck of Ishwar Singh, as they were at a distance of 1-½ acres. No electric bulb was on, nor was it a moonlit night. Accused Sultan Singh is no other person than the son of Ishwar Singh. The other two witnesses Darbara Singh PW4 and Dhara Singh PW5 are the sons of Ishwar Singh and the brothers of accused Sultan Singh, they have not supported the prosecution case.

We have heard the learned counsel for the parties and perused the record with their assistance.

The testimony of Baldev Singh PW6 and Suresh Chand PW7 is not trustworthy. Baldev Singh PW6 along with Suresh Chand PW7 has stated, that he witnessed the occurrence from a distance of 1-½ Killas i.e. about a distance of 300 feet. Occurrence had taken place on 27.6.1994 at 8.00/9.00 p.m. At that time, it was dark. Nothing is on record to show that an electric bulb was on, or it was a moonlit night. Daily diary report No.44 was lodged on 28.6.1994 at 12.45 a.m. This witness has further stated that the police came to the place of occurrence within half an hour. If the DDR was lodged at 12.45 a.m., then the police could not have reached within half an hour. The FIR it seems was recorded after the police had reached the place of occurrence, after consultations with the witnesses. The other two witnesses, who in fact could be taken as natural witnesses, as deceased had been taken from his house to the house of accused Sultan Singh, Darbara Singh PW4 the propounder of the FIR and Dhara Singh PW5, have stated that no occurrence had taken place. They have resiled from

their statements. Darbara Singh PW4 and Dhara Singh PW5 are no other persons than the sons of the deceased.

The motive for the commission of the offence does not appeal to the mind. Darbara Singh PW4 has stated, that their father deceased Ishwar Singh had mortgaged three acres of land for a sum of Rs. 1,25,000/- in favour of Makhan Singh about ¾ years back as he had to raise funds for the marriage of his sister. The prosecution has tried to make this mortgage as a grudge against Sultan Singh accused. Accused Sultan Singh would not have killed his own father as the amount of money raised after mortgaging the land was for a common purpose and not raised by Ishwar Singh to be spent on himself in a frivolous manner.

We do not find any infirmity in the judgment of the learned trial Court.

Dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

September 25, 2006
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO